

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

TO: 11/11/85
RM-I

3/28/2

FILE: B-217063

DATE: May 28, 1985

MATTER OF: Bonnie S. Petrucci - Reimbursement of
Real Estate Broker's Commission -
DIGEST: Exchange of Residences at Old Duty Station

Employee exchanged residence at old duty station for another residence in the vicinity of the old duty station incident to a change of official station. Employee may be reimbursed under 5 U.S.C. § 5724a(a)(4) for real estate broker's commission and other allowable expenses incurred as "seller" in the exchange of residences since the assumption of the balance of the employee's mortgage loan is tantamount to a cash payment. Amount of broker's commission which is reimbursable is governed by the Federal Travel Regulations, para. 2-6.2a, as amended, and is limited by the amount generally charged for such services by the broker or by the brokers in the locality where the residence is located.

This decision is in response to a request by Mr. Don E. Hansen, Chief, Fiscal Standards Branch, Financial Systems Division, Office of Accounting, Federal Aviation Administration (FAA), Department of Transportation, for a decision as to whether a travel voucher submitted by Ms. Bonnie S. Petrucci, an employee of the agency, may be certified for payment. The voucher is for reimbursement of a real estate broker's commission, document preparation charge, and state revenue stamps paid by Ms. Petrucci in an exchange of residences at her old duty station. For the reasons hereafter stated, the expenses may be certified for payment in accordance with the applicable law and regulations.

Ms. Petrucci was authorized a permanent change of station from Dayton, Ohio, to Miami, Florida, pursuant to a travel order dated June 26, 1984. Ms. Petrucci and her husband entered into a real estate exchange contract with the Baileys, husband and wife, under which they exchanged

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their residence in Tipp City, Ohio, for a house owned by the Baileys in Monroe, Ohio. The sales price of the property owned by the Petruccis was \$183,600, and the sales price of the property owned by the Baileys was \$96,350. The loan portion of the Petrucci sales price was assumed by the Baileys.^{1/}

Ms. Petrucci is claiming reimbursement of \$12,852 as the real estate broker's commission for the sale of her residence. However, this amount is not shown on the settlement statement for the "sale" of the Petrucci residence to the Baileys. Upon questioning of this fact, Ms. Petrucci obtained a letter from the lender (Milton Federal Savings and Loan Association) which acknowledged the payment of a 7 per cent real estate commission to a realty company on a selling price of \$183,600, associated with the sale of the Petrucci residence to the Baileys. The lender stated that the commission amount, \$12,852, should have been inserted on line 703 of its closing statement dated July 24, 1984, in connection with the sale of the Petrucci residence.

The FAA points out that the amount of \$12,852 is identified as an expense paid by the Petruccis on the "purchase" of the Baileys' property. Further, no other real estate commission is shown on the two closing statements, indicating that the commission involved in the trade of properties was paid entirely by the Petruccis, and none paid by the Baileys.

^{1/} While the Petrucci's exchanged one residence for another at Ms. Petrucci's old duty station, we have no reason to question that this transaction was prompted by, and related to, her change of station. In any event, a specific determination to this effect is not necessary in the circumstances of this case in order to establish eligibility for reimbursement of real estate expenses. See Warren L. Shipp, 59 Comp. Gen. 502, 504 (1980).

The fiscal officer asks the following questions concerning this transaction:

"1. May the Government reimburse the employee for costs incurred in trading a residence at the old duty station for another residence in the same area?

"2. If so, is the letter from Milton Federal sufficient to indicate that the real estate commission was related to the sale portion of the transaction?

"3. Is it reasonable that the entire commission in this transaction was paid by our employee?

"4. May we properly reimburse the employee for the \$12,852.00 real estate commission involved in this transaction?"

The reimbursement of real estate expenses incurred in connection with a federal employee's change of duty station is governed by 5 U.S.C. § 5724a(a)(4) and the implementing regulations, Chapter 2, Part 6 of the Federal Travel Regulations (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984) (FTR). Paragraph 2-6.1 of the FTR provides that to the extent allowable "the Government shall reimburse an employee for expenses by him/her in connection with the sale of one residence at his/her old official station, * * *." We have recognized that the regulation permits reimbursement of certain expenses incurred for the purpose of transferring title by other than the usual sale or purchase transaction. 61 Comp. Gen. 112 (1981).

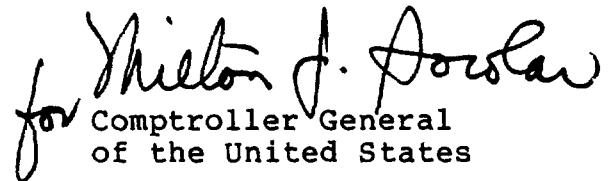
In responding to the questions asked by the fiscal officer, first, the FAA may reimburse Ms. Petrucci for the allowable costs incurred in the sale and exchange of her residence for another house, both in the vicinity of the employee's old duty station. In a case with similar factual circumstances, involving an exchange of residential properties at the old duty station, we stated that the assumption of the balance of the mortgage loan of the employee by another party was tantamount to a cash payment to the employee. We recognized the transaction as a sale within the meaning of the predecessor law and regulations of 5 U.S.C. § 5724a(a)(4) and FTR para. 2-6.1. See B-166419, April 22, 1969.

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Our review of the letter from the lender, as well as informal contact with the writer of the letter, discloses that the real estate broker's commission of \$12,852 was inadvertently entered on the closing statement for the Baileys' property. In line with the usual and local custom that the seller pay the broker's commission and since the realty company had listed the employee's (Petrucchi) property for sale and made efforts to sell it, such commission should have been listed on line 703 of the closing statement for the sale and exchange of the Petrucchi property. Therefore, the letter is sufficient to show that the broker's commission was related only to the sale and exchange of the Petrucchi residence and further, that it was reasonable that the entire broker's commission be paid by Ms. Petrucchi and her husband. Questions 2 and 3 are answered accordingly.

As to whether Ms. Petrucchi may be properly reimbursed the real estate broker's commission, the commission may be certified for payment provided it is not in excess of the rates generally charged for such services by the broker or by brokers in the locality of the old duty station. See FTR paras. 2-6.2a and 2-6.3c.


for Comptroller General
of the United States